IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1971 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRABHUSHAN SARDARILAL SHARMA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 1971 of 2003

MR ANIL S DAVE for Petitioner

MR KP RAVAL AGP for Respondent Nos. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/06/2003

ORAL JUDGEMENT

1. Heard Mr.A.S.Dave, learned advocate for the petitioner and Mr.K.P.Raval, learned AGP for the respondents.

2. In this petition, Rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 28.02.2003, made it returnable after six weeks. In the present petition, the petitioner has challenged the order of detention dated 14.01.2003 passed by the Commissioner of Police, Ahmedabad City under Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 [hereinafter referred to as the "PASA Act"] and at present the petitioner is detained at Bhavnagar District Jail. Looking to the ground of detention, two offences dated 14.06.2002 and 13.01.2003 under the provisions of Prohibition Act have been registered against the petitioner. In respect to offence No.2, the petitioner was arrested on 13.01.2003 and at the time, when the detention order has been passed, he was in Police Custody. Two unregistered offences dated 03.12.2002 and 25.12.2002 have been disclosed by the secret witnesses, whose statements have been recorded by the Sponsoring Authority on 13.01.2003 and the same were verified by the Detaining Authority on 14.01.2003. Thereafter, on the very same day, the order of detention has been passed by the Detaining Authority under the provisions of the PASA Act and the order of detention has also been served on the same day to the petitioner. A proposal forwarded by the Sponsoring Authority on 13.01.2003 to the Detaining Authority.

3. Mr.A.S.Dave, learned advocate for the petitioner has raised three contentions before this Court for challenging the order of detention. He has submitted that at the time when the order of detention has been passed, the petitioner was in Police Custody. He has also submitted that the statements of the secret witnesses were verified by the Detaining Authority on 14.01.2003 and on the very same day, the order of detention has been passed and the same has been served to the petitioner. He has also submitted that the Detaining Authority has not been verified the genuineness and credibility of the witnesses, those who have made their statements, because of, on the same day verification made by the Detaining Authority and the order of detention has been passed.

4. Mr.K.P.Raval, learned AGP for the respondents has submitted that the detail affidavit-in-reply has filed by the Detaining Authority and the Detaining Authority has considered all the material, which was placed before him, for coming to the subjective satisfaction and, thereafter, the Detaining Authority has passed the order of detention. He has also submitted that the Detaining Authority has examined the genuineness of the fear

expressed by the secret witnesses and after considering the statements given by the secret witnesses, which found to be true and the order of detention has been passed by the Detaining Authority. He has also submitted that at the time when the petitioner was in Judicial Custody, the Detaining Authority has rightly appreciated that after completion of remand period, he may approach, by way of filing an application for bail to the concerned Court and if the bail is granted, the petitioner will again indulge his activities which is disturbed to the public tempo and peace in the society. He has also submitted that not only offences registered against the petitioner, but unregistered two offences are serious in nature taking into account, by passing the order of detention. Therefore, according to him, the Detaining Authority has considered all the material which found to be correct and ultimately on this basis, application of mind, the detention order has been passed by the Detaining Authority under the provisions of the PASA Act and rightly claim privilege under Section 9(2) of the PASA Act and, therefore, the order of detention is legal and valid and not vitiated of the grounds raised by the petitioner.

5. I have considered the submissions made by both the learned advocates. The undisputed fact is that the detention order is dated 14.01.2003 and on the same day, the order of detention has been executed against the petitioner, he was in judicial custody. The statements of the secret witnesses recorded by the Sponsoring Authority on 13.01.2003 and verified by the Detaining Authority on 14.01.2003. Two unregistered offences dated 03.06.2002 and 25.12.2002 were mentioned by the secret witnesses, but the Detaining Authority has considered the genuineness and fear expressed by the secret witnesses and there was no consideration by the Detaining Authority in respect to the fact, which has been narrated is correct or not and because of the activities carried out by the petitioner is disturbed the public interest. Apparently, the Detaining Authority has not taken care to inquire this aspect because, the order of detention has been hurriedly passed on the same date, where the verification has been made by the Detaining Authority. At the time when the order of detention was passed, the petitioner was in Police Custody. Therefore, considering the undisputed aspect about the Police Custody of the petitioner, on the same day the order of detention has been passed after verification of the statements of the secret witnesses. The view taken by this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and others, reported in 2000 (3) G.L.R. 2696

and the decision given by this Court in Special Civil Application Nos.2866, 2867 and 2868 of 2003 dated 10.06.2003, wherein the question has been examined by this Court, at the time of passing the order of detention, when the petitioner is in police custody or judicial custody then the Detaining Authority is required to be considered that there is likelihood to grant bail by the Competent Court or not, that aspect was also not examined by the Detaining Authority. In respect to the contention, that the genuineness and credibility of the witnesses, no examination made by the Detaining Authority, as the Detaining Authority has no time to examine such aspect before passing the order of detention because on the same day on which the statements of the secret witnesses verified by the Detaining Authority and, therefore, the view taken by this Court in Special Civil Application No.1692 of 1999 dated 07.07.1999, on that basis the order of detention is required to be vitiated.

6. Considering the decisions of this Court in respect to each contention raised by Mr.A.S.Dave, is fully applicable to the facts of the present case and, therefore, according to my opinion, the order of detention is required to be vitiated on that ground alone.

7. In the result, the present petition is allowed. The order of detention dated 14.01.2003 passed by the Commissioner of Police, Ahmedabad City, against the detenu Shri Chandrabhushan Sardarilal Sharma detained at Bhavnagar District Jail is hereby quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H. K. Rathod, J.]

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